IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7588 OF 2005

Kasam Daud Bargir.... Petitioner

versus

Jamatul Muslimin Madhil Wada ... Respondent.

Shri C.N. Chavan for the petitioner.
Shri Parag Shelker for the Respondent.

CORAM; P.V. KAKADE, J.

DATED; FEBRUARY 06, 2006.

P.C:

1. Heard both the sides. Perused the record.

2. This petition is moved against the judgment and order passed by the Joint District Judge, Ratnagiri dated 18-10-2005 dismissing the petitioner's appeal and refusing the temporary injunction and confirming the order passed by the trial court dismissing the application for temporary injunction.

3. According to the petitioner, he is a tenant of the open land since last 30 years and has paid the rent till December 2003. It is his case that the defendant which is a religions institution, has let out the open space from out of this land to various persons for

business. The plaintiff used to errect a temporary shed for 5 to 6 months for running a Saw Mill on this open land and for that purpose was taking the consent of the land lord for submitting application to Municipal Council for permission to run Saw Mill. This was going on for last several years. However, during the year when the suit was filed, the plaintiff had gone to the defendant for getting consent, to erect a temporary shed but defendant refused and threatened the dispossession. Hence suit for injunction came to be filed. The defendant resisted the suit interalia denying the possession of the plaintiff in the disputed site when the suit was filed.

4. The learned trial Judge after adjudicating the dispute, came to the conclusion on merit that the plaintiff had failed to make out primafacie case to seek temporary injunction. The court held that no injury was likely to cause to the plaintiff and infact the court also found that there was reason to believe that the petitioner surrendered the premises to the landlord in the year 2000. Therefore there was no question of issuance of any injunction and as such the application was dismissed.

5. An appeal was preferred against the said order. The lower appellate court after hearing both the

parties confirmed the finding recorded by the trial court and dismissed the appeal and the present petition is filed against that order.

6. At the outset it may be noted that both the parties have led certain evidence on record. However when the defendant has come out with a case of surrender of the lease of the plaintiff, the plaintiff has produced no conclusive evidence to show that he is in possession of the suit premises on that date. It was observed by the lower court that though certain documents have produced on record which are sufficient to show existence of the shed before the year 2000 and therefore those are of no help to show continuation of the possession at the time of filing of the suit. According to the lower Appellate Court, the lease of temporary injunction on the basis of possession was rather pre-mature and the question whether the lease of the plaintiff was continued, was required to be adjudicated which would be done at the time of final hearing of the suit. However, the plaintiff submitted that he would be out of possession and his business would suffer from irreparable loss, it is needless to mention that evidentally the business of Saw Mill is not continued in the face of the recent Apex Court's order and therefore there is no question of any injury caused to the plaintiff pending the suit.

7. In view of this aspect I am of the opinion that it is not a fit case to interfere with the decision of the Courts below who had recorded concurrent findings in this regard and thus I hold that there is no merit in the petition and it deserves to be dismissed. Hence petition is dismissed with no order as to costs.

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